IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1368 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

BHANABHAI DHIRUBHAI RATHOD - Appellant(s)
Versus
AMIRUTLLA NASIRULLA & 2 - Defendant(s)

==========

Appearance :
MR VJ DESAI for Appellant(s) : 1,
MR KF DALAL for Defendant(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Surat passed in M.A.C.P. No.56 of 1982 dated 24th November, 1982.

2.0 The brief facts of the case are that the appellant met with an accident caused by a truck driven by present opponent No.1 and owned by present opponent No.2. On account of the said

accident, the appellant received serious bodily injuries. Therefore, he preferred a petition claiming Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that in view of the fact that the appellant is a labourer and had lost one leg, the Tribunal ought to have awarded Rs.30,000/- under the head of pain, shock and suffering. He has further submitted that the Tribunal ought to have taken disability sustained by the appellant at 100 per cent of the body as a whole.

4.0 Heard. It is not in dispute that on account of the said accident, the left leg of the appellant was amputated five inches below the knee. As regards compensation under the head of loss of future income is concerned, the Tribunal

has awarded Rs.36,000/-. The said figure has been arrived at by taking the monthly income of the deceased at Rs.375/- and by applying a multiplier of 15 years and keeping in mind his disability to be more than fifty per cent. However, considering the facts of case I am of the view that the Tribunal has committed an error in computing compensation under the said head.

4.1 For deciding the amount of compensation under the loss of future income, it would be relevant to refer to a full bench decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors."*** reported in 1996 (4) SCC 362 [1996 (3)GLR 136]. In that decision the Court reiterated the method of working out as to what would be a 'just' compensation.

4.2 Applying the principle laid down in the aforesaid decision, the Tribunal ought to have assessed the average monthly income of the

appellant at Rs.575/- i.e.([Rs.375 X 2] + 400 = 1150) [1150/2 =Rs.575]). Now, since the appellant has sustained 53 per cent disability of the body as a whole, the monthly loss of income would come to Rs.300/-(1150-53% = Rs.300)i.e. Rs.3600/- loss of income per year. The appellant was aged 38 years at the time of accident, and hence, the Tribunal has adopted a multiplier of 15 years. Looking to the age of the appellant the multiplier adopted by the Tribunal is just and reasonable. Hence, the total loss of future income would come to Rs. 54,000/- i.e. (Rs.3600 X 15 years = 54,000/-). Since, the Tribunal has awarded Rs.36,000/-, the appellant shall be entitled for an additional amount of Rs.18,000/- under the said head.

4.3 On perusal of the documents placed on record it appears that the appellant was doing labour work and on account of the said accident he had to remain in hospital for a period from 27.01.1982 to 03.03.1982. It was the consistent

practice of the Courts/Tribunals during the period in question to award Rs.15,000/- under the head of pain, shock and suffering in claim petitions. Therefore, I am of the view that the Tribunal ought to have awarded Rs.15,000/- under the said. Since, the Tribunal has already awarded Rs.13,000/-, the appellant shall be entitled for an additional amount of Rs.2,000/- under the said head. As regards the compensation under the head of medical expenses is concerned, the Tribunal has awarded only an amount of Rs.200/- under the said head. It may be noted that on account of the said accident, the appellant had to remain in hospital as indoor patient for about two months. Considering the period of hospitalization and the medical evidence on record the amount awarded by the Tribunal towards medical expenses is meagre. Even, if we consider the daily medical expenses of the appellant at Rs.10/-, the Tribunal ought to have awarded Rs.1,200/- towards expenses in the hospital. Hence, in all the appellant shall

be entitled to an additional amount of Rs.21,000/-.

5.0 In the result, the appeal is partly allowed. The appellant shall be entitled to an additional amount of Rs.21,000/- at the rate of six per cent interest from the date of application till realization. No order as to cost.

(K.S. Jhaveri,J.)

Umesh/